

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

STEPHANIE F. WELLS

PLAINTIFF

vs.

Civil Case No. 4:05CV00122 HLJ

JO ANNE B. BARNHART, Commissioner,
Social Security Administration

DEFENDANT

PROPOSED FINDINGS AND RECOMMENDATIONS

INSTRUCTIONS

The following recommended disposition has been sent to United States District Court Judge James M. Moody. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Court Clerk no later than eleven (11) days from the date of the findings and recommendations. The copy will be furnished to the opposing party. Failure to file timely objections may result in waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a hearing for this purpose before the District Judge, you must, at the same time that you file your written objections, include the following:

1. Why the record made before the Magistrate Judge is inadequate.
2. Why the evidence proffered at the hearing before the District Judge (if such a hearing is granted) was not offered at the hearing before the Magistrate Judge.
3. The detail of any testimony desired to be introduced at the hearing before the District Judge in the form of an offer of proof, and a copy, or the original, of any documentary or other non-testimonial evidence desired to be introduced at the hearing before the District Judge.

From this submission, the District Judge will determine the necessity for an additional evidentiary hearing, either before the Magistrate Judge or before the District Judge.

Mail your objections and "Statement of Necessity" to:

Clerk, United States District Court
Eastern District of Arkansas
600 West Capitol Avenue, Suite 402
Little Rock, AR 72201-3325

DISPOSITION

An Order and Judgment have been entered in this matter granting Defendant's Motion to Remand. Plaintiff has now filed a motion for attorney's fees and costs pursuant to the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412. She requests \$4,433.50, representing 28.50 hours of attorney work performed in 2004, 2005, and 2006 before this court at a rate of \$146.00 per hour and 1.50 hours of work by a paralegal at \$50.00 per hour and costs of \$197.00. Defendant does not object to an award of fees or costs under the EAJA, and she does not object to the number of hours requested, the hourly rate

requested or the amount of costs.

The statutory rate of compensation for work performed by an attorney set forth in 28 U.S.C. § 2412(d)(2)(A)(ii) is \$125.00 per hour. In other cases in this District, the court has granted an enhancement of the hourly rate of compensation to \$138.00. E.g., Brown v. Massanari, Case No. 3:99CV00458 (E.D.Ark. Sept. 19, 2001); Handford v. Massanari, Case No. 3:99CV00423 (E.D.Ark. Sept. 25, 2001). In those cases, the plaintiffs presented sufficient proof of an 11% increase in the cost of living from March of 1996, when § 2412(d)(2)(A)(ii) was last amended, to December of 2000. The court has declined in the past to consider an increase in the cost of living beyond December of 2000, and it declines to do so in this case.

However, the Office of the General Counsel of the Social Security Administration has entered into agreements with counsel for other plaintiffs in cases in this district to calculate attorneys' fees on an annualized basis, using the Consumer Price Index for All Urban Consumers (CPI-U). The parties in those cases agreed that work performed in 2001 should be compensated at the rate of \$138.00 per hour, work performed in 2002 should be compensated at the rate of \$144.00 per hour and that in 2003 and thereafter the rate should be calculated using the mid-year CPI-U. Their calculations resulted in an agreed upon fee of \$147.00 per hour for work performed in 2003, \$152.00 for work performed in 2004 and \$156.00 for work performed in 2005. Cloinger v. Barnhart, 2:04CV 00172 (E.D. Ark. 2006). Since

Plaintiff's hourly rate request falls within those agreed rates, the court will grant her request for compensation at a rate of \$146.00 per hour.

IT IS THEREFORE ORDERED that Plaintiff's motion for attorney's fees is GRANTED and Plaintiff is hereby awarded attorney's fees and costs in the amount of \$4433.50 pursuant to EAJA. The Commissioner is directed to certify said award and pay Plaintiff's attorney this amount.

SO ORDERED this 24th day of October, 2006.


United States Magistrate Judge